

years prior to their transfer to the registrant, also state the cost thereof to the promoter.

Instructions to Item 404: 1. No information need be given in response to any paragraph of Item 404 as to any compensation or other transaction reported in response to any other paragraph of Item 404 or to Item 402 of Regulation S-K (§ 229.402 of this chapter) or as to any compensation with respect to which information may be omitted pursuant to Item 402.

2. If the information called for by Item 404 is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, information shall be given for the periods specified in the Item and, in addition, for the two fiscal years preceding the registrant's last fiscal year.

3. A foreign private issuer will be deemed to comply with Item 404 if it provides the information required by Item 7.B of Form 20-F (17 CFR 249.220f).

[47 FR 55665, Dec. 13, 1982, as amended at 48 FR 37612, Aug. 19, 1983; 48 FR 44475, Sept. 29, 1983; 56 FR 30053, 30054, July 1, 1991; 59 FR 65637, Dec. 20, 1994; 64 FR 53909, Oct. 5, 1999]

§ 229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

Every registrant having a class of equity securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78j), every closed-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*), and every holding company registered pursuant to the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) shall:

(a) Based solely upon a review of Forms 3 (§ 249.103) and 4 (§ 249.104) and amendments thereto furnished to the registrant pursuant to § 240.16a-3(e) during its most recent fiscal year and Forms 5 and amendments thereto (§ 249.105) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(2)(i) of this Item.

(1) Under the caption "Section 16(a) Beneficial Ownership Reporting Compliance," identify each person who, at any time during the fiscal year, was a director, officer, beneficial owner of more than ten percent of any class of equity securities of the registrant registered pursuant to section 12 of the Exchange Act, or any other person subject to section 16 of the Exchange Act

with respect to the registrant because of the requirements of section 30 of the Investment Company Act or section 17 of the Public Utility Holding Company Act ("reporting person") that failed to file on a timely basis, as disclosed in the above Forms, reports required by section 16(a) of the Exchange Act during the most recent fiscal year or prior fiscal years.

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(2)(i) of this section, unless the registrant otherwise knows that no Form 5 is required.

NOTE: The disclosure requirement is based on a review of the forms submitted to the registrant during and with respect to its most recent fiscal year, as specified above. Accordingly, a failure to file timely need only be disclosed once. For example, if in the most recently concluded fiscal year a reporting person filed a Form 4 disclosing a transaction that took place in the prior fiscal year, and should have been reported in that year, the registrant should disclose that late filing and transaction pursuant to this Item 405 with respect to the most recently concluded fiscal year, but not in material filed with respect to subsequent years.

(b) With respect to the disclosure required by paragraph (a) of this Item:

(1) A form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date.

(2) If the registrant (i) receives a written representation from the reporting person that no Form 5 is required; and (ii) maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this Item as having failed to file a Form 5 with respect to that fiscal year.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30391, June 14, 1996]